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General and complete disarmament: the illicit trade in small arms and light weapons in all its aspects

Letter dated 10 September 2002 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General

I have the honour to convey to you a letter dated 8 July 2002 addressed to you by Ján Kubiš, Secretary-General of the Organization for Security and Cooperation in Europe (OSCE) (see annex), to which is attached the Model Answer for the OSCE Information Exchange on Small Arms and Light Weapons of 2001, in accordance with decision 9/02 of the Forum for Security Cooperation of OSCE, which is also enclosed.

I would be most grateful if the text of the present letter and its attachments could be circulated as an official document of the General Assembly, under item 67 (v) of the provisional agenda.

(*Signed*) Gonçalo de **Santa Clara Gomes**
Ambassador
Permanent Representative

* A/57/150.

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Annex to the letter dated 10 September 2002 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General

I have the honour to transmit to you the text of the Model Answer for the OSCE Information Exchange on Small Arms and Light Weapons of 2001 (see appendix II), in accordance with decision 9/02 of the Forum for Security Cooperation of the Organization for Security and Cooperation in Europe (see appendix I).

The Model Answer was prepared by the OSCE Conflict Prevention Centre in order to assist the participating States in fulfilling their commitments regarding the June 2001 information exchange, as mandated by the OSCE Document on Small Arms and Light Weapons. The document was designed to support participating States in their efforts to update their submissions of last year. It was based in part on an overview of the June 2001 information exchange, also prepared by the Conflict Prevention Centre at the request of the Forum for Security Cooperation. The overview, which reflected the general trends and patterns in the information shared by participating States, served the dual purpose of informing the Workshop on the Implementation of the OSCE Document, held on 4 and 5 February 2002, and providing useful information to delegations about practices and procedures implemented by the participating States.

I would be grateful if you could ensure that the text of the OSCE Model Answer on small arms and light weapons is distributed to all States Members of the United Nations.

(*Signed*) Ján **Kubiš**

Appendix I

Organization for Security and Cooperation in Europe
Forum for Security Cooperation
362nd plenary meeting

Decision No. 9/02
Provision of the Model Answer for the OSCE Information Exchange on Small Arms and Light Weapons to the United Nations

The Forum for Security Co-operation (FSC),

Recalling paragraph five of the preamble to the OSCE Document on Small Arms and Light Weapons (FSC.DOC/01/00), in which participating States noted the opportunity for the OSCE, as a regional arrangement under Chapter VIII of the Charter of the United Nations, to provide a substantial contribution to the process in the United Nations on combating the illicit trade in small arms and light weapons in all its aspects,

Recognizing the role played by OSCE participating States in the negotiation of the final United Nations Programme of Action on the Illicit Trade in Small Arms and Light Weapons in all its Aspects, and conscious of the contribution that regional organizations could make to support and foster the implementation of the Programme of Action,

Noting that, as tasked by the Forum for Security Co-operation, the Conflict Prevention Centre (CPC) conducted an Overview of the First OSCE Information Exchange on Small Arms and Light Weapons regarding the 30 June 2001 information exchanges stipulated by the SALW Document (FSC.GAL/9/02) and, in accordance with the recommendations made in the Overview, prepared a Model Answer based on this information exchange (FSC.GAL/39/02),

Recognizing that the Model Answer is an objective and substantive contribution to the implementation of the SALW Document, and that this OSCE tool could be useful to other United Nations Member States in their efforts to fully implement the United Nations Programme of Action and other international commitments on SALW,

Decides,

To task the FSC Chair to request the good offices of the Secretary General for the transmission of the Model Answer to the United Nations, for distribution to its members, with a cover letter which will also provide introductory information of a general character on the Overview.

Appendix II

Organization for Security and Cooperation in Europe
Conflict Prevention Centre
Vienna, 27 March 2002

Model Answer for the OSCE Information Exchange on Small Arms and Light Weapons, 2001

1. Introduction

In accordance with recommendations made in the Overview of the first OSCE information exchange on small arms and light weapons, and as tasked by the Chair of the FSC, this Model Answer for the 2001 information exchange has been designed to provide a basis for a consistent structure for the 2001 information exchange for those participating States which still are to submit their first report. This Model Answer also serves the purpose of a reference model to be compared to national reports by those participating States wishing to provide an update of their first submission.

The following gives a brief review of the main reporting elements which participating States were to provide within the first round of information exchanged under the Small Arms Document. Where possible illustrative examples are given to facilitate reporting.

2. Method of Reporting

Two threshold criteria may be considered in providing information. The first is whether the report explicitly addresses the subject matter. Relevant information on the absence of a State policy is helpful for the information exchange as it makes state policies and reporting explicit. The second concern is whether the information provided is sufficient to contribute to the development of best practices. Important aspect is whether the report provides sufficient information to allow its comparability to the reports of other participating States so that commonalities and/or differences can be observed and communicated to participating States.

3. National Marking Systems:

Information on national marking systems broadly falls into seven categories (in no particular order):

- Marks used on SALW
- Techniques for marking
- State policies in marking unmarked weapons
- National authority in charge of marking
- Whether there is state control over the private sector regarding marking
- Whether State laws or practices influence licensed production outside of the national territory
- Information on the means for tracing weapons, and/or details on record keeping.

3.1 Marks used on SALW

Information about the actual marks placed on weapons provides a means for other states to determine the origin and details of weapons in their possession if they were imported or seized. This reporting also provides the reasons for state marking, what that marking is designed to accomplish, and identifies the primary actors in the marking process. Providing information about formal laws regulating action, as well as non-legislated practices (such as marking traditions in private firms) enables States to determine the relevant authorities and so know whether practices are likely to

change in the future. Matters that should be considered in all submissions, or updates to submissions, include:

- As thorough a discussion of civilian weapons as those possessed by State organs
- What laws or decisions in fact require that such marks be placed on the weapons
- When did such practices come into effect
- Why are certain marks considered mandatory and not others
- Are changes or modifications being made to this system at the present time, and if so, what are the reasons for the proposed changes
- What constitutes a "permanent manner" when marking weapons
- Was the definition of "permanent" arrived at through a process that could be shared with other OSCE member States who may have to cross that bridge in the future
- Are there any lessons learned about developing a marking system and implementing it that could provide guidance for other OSCE member states to save time, money, or political difficulties?

3.2 Techniques for marking

Techniques refer to physical processes of applying marks to weapons. Guidelines for techniques -- such as the marks should be made in a visible and permanent manner, should not substitute for the means of providing the marks. Possible reporting includes stamping, pressing, laser printing, stenciling and embossing (among others). Information provided is not only useful for the overall OSCE information exchange, but can aid other States in developing techniques and finding cost-effective and simple procedures that could be implemented in the future.

3.3 State policies in marking unmarked weapons

All states potentially face the problem of encountering unmarked weapons imported (legally or illicitly) into their territory, whether or not they have armed state organs or manufacture weapons. It therefore follows that all participating States should consider the matter applicable. In some case, reporting on the absence of a policy is equally helpful information for the information exchange.

3.4 National authority in charge of marking

Authorities for marking should be provided. If the authority is centralized, the name of the State organ should be provided, and if the matter is de-centralized, general information on the names of the state (or sub-state) organs and their capacity for independent action should be provided.

3.5 State control over the private sector regarding marking

Private sector practice may or may not be under State control. This information is important because it recognizes the actual authority for decision making about marking and also under whose authority present practice might be altered. Reporting on State control may include the name of the relevant State organ, and if there is no current State control, this information may be provided.

3.6 State laws or practices on licensed production outside of the national territory

Matters of extra-territorial jurisdiction might be addressed by those States who license production of SALW outside State territory.

3.7 Information on the means for tracing weapons, and/or details on record keeping

States should report on whether records are kept, what those records contain, and who has access to the records. Matters of content could include the duration of record keeping, the specific types of data (e.g. weapon type, quantity, etc.), and what laws regulate the management of those records. Access to records is also important because it informs States about their own capacity to trace weapons from another State. Some information on the means by which these records could be accessed by interested parties should be provided, or else States may provide explicit information that the records are not accessible or only through certain authorities under particular conditions.

As record keeping affects all States, it may be worthwhile to provide information about domestic practices, lessons learned, and some comments on what has been found beneficial or detrimental so that other States now developing such systems may avoid mistakes and/or gain from other members' expertise.

4. National Procedures for the Control over Manufacture

Information on national procedures for the control over manufacture broadly falls into four categories (in no particular order):

- Procedures for the issuance of licenses and authorizations
- Review and renewal of licenses
- Procedures for the revocation of licenses
- Prosecution/penalization of illicit manufacture

4.1 Procedures for the issuance of licenses and authorizations

Reporting on procedures concerns the actual process a present or potential manufacturer must undertake to receive a license or authorization. This information should include those details the manufacturer must submit to the authorizing body. Reporting could also address the State system for evaluating those applications. Specifically, this involves the detailing of the application review process (who conducts it, how long the process takes), as well as the criteria used to accept or reject applications. It is also helpful to know what the license allows the manufacturer to do, and for how long.

4.2 Review and renewal of licenses

Once a license has been issued, States may have procedures for reviewing the manufacturer's compliance with the conditions of the license. Reports should explain whether such review systems exist, and if so, how they are implemented. For example, is the process standardized so that reviews take place regularly, or are they conducted only when there is suspicion of wrong-doing?

Furthermore, if licenses are issues for a certain period of time, or else for certain production runs, how might those licenses be renewed, and what is the process the manufacturer undertakes?

Helpful reporting information includes:

- Procedures for renewal
- Relevant authorized bodies to process applications
- Criteria used to accept or reject renewals
- Whether renewals have ever been rejected, and if so, on what grounds
- For how long renewals are active

4.3 Procedures for the revocation of licenses

Concerns here involve the national criteria for electing to revoke a license and the means of implementing that decision. How long does the process take? Can the decision be appealed, and if so, on what grounds?

4.4 Prosecution/penalization of illicit manufacture

Illicit manufacturer involves manufacturing without the needed State authorization. Reporting should explain how States prosecute illicit manufacturers, the State organ or organs that are involved in the process, and what the consequences are for having been found guilty of the action. If different penalizations accompany different actions (e.g. fines vs. imprisonment, etc.), reports might offer some explanation of the system. For the benefit of those States now developing such systems, States with formal procedures may provide information on what systems have been found most advantageous.

5. National legislation and export control policies

In sub-section III(F)2 of the Document, participating States agreed to exchange information on national legislation and current practice in export policy, procedures and documentation, with a view to identifying elements for development of "best practices" in these areas.

The requirement to report on export controls was one of the broadest topics on the first information exchange. Here is a list of questions which participating States provided information on:

- Are OSCE common export control criteria followed?
- Are there other international commitments?
- What types of licenses are issued?
- What is the licensing authority?
- What is the period of validity for licenses?
- Are there licenses for temporary export?
- Any there circumstances in which licenses are not required?
- Is revocation of a license possible?
- What considerations are made for embargoed destinations or areas of concern?
- What is the number of licenses issued per year?

- What is the number of staff engaged in export licensing procedures?
- How long are transfer records kept (years)?
- Are end-use documents required?
- Is there any end-use verification?
- What procedures govern re-transfer?
- Are there provisions of assistance for other states regarding export controls?
- Are there penalties for illegal export?

5.1 OSCE common export control criteria and other international commitments

As part of the OSCE Document, the participating States established and agreed to follow **common criteria governing the export of SALW**. The Document requires that each participating State will ensure that the criteria is reflected in its national legislation and/or national policy documents.

Therefore, participating States should indicate if the OSCE common export criteria are incorporated in national legislation (for example the law governing conventional arms exports, including SALW), or whether the OSCE criteria are incorporated into policy guidelines. Also it is useful to know how the OSCE common criteria is followed in practice.

Participating States should also report on **other international arrangements** they take into consideration before permitting exports. These include the criteria and principles of the EU Code of Conduct, the UN Register on Conventional Arms Transfers, the Wassenaar Arrangement, the Australia Group, the Nuclear Suppliers Group, the Missile Technology Control Regime and various regional initiatives.

5.2 Types of licenses

States should provide a list of the **types of licenses** issued and a brief explanation to each type. Elaboration of the types of licenses issued is very useful as it can be relevantly easy to confuse between different types of licensing systems.

For example: 1. Individual License – authorizes the export of one or several pieces to one recipient upon application .
2. Collective license – authorizes a certain exporter to export a group of equipment to several recipients

Examples of state practice are also welcomed in this section as they could be valuable for other participating States; for example a detailed explanation of a system and procedures for **provisional enquiry** could prove to be very useful for States which are currently renewing their legislation and practice.

5.3 Period of validity, revocation and exceptions

This sections concerns the **period of validity** of different types of licenses, grounds for revoking an issued license as well as any exceptions were a license is not needed at all. This information provides other participating States with a better understanding on state practice on export licensing procedures.

The participating States should provide a brief explanation of the period of validity of each of the types of license issued. It could also be indicated how this period of validity is apparent on each license documentation. This helps for example officials in charge of transits at the boarders.

Revocation of issued licenses concerns mainly the criteria used to revoke a previously issued license, for example revocation in situations where the conditions of the license are no longer met, or the export rules are violated. Information on the implementation would also be helpful: for example how many licenses have been revoked and why? How long does the process take and can the decision be appealed? Is it possible to suspend a license for a certain period of time?

The participating States should provide information on the **circumstances in which a license is not required**. Such exceptions to the main rule could be illustrated with concrete examples such as peacekeeping operations, military training exercises, repairing and delivery of spare parts, private persons on temporary travel with legally owned weapons.

5.4 Number of licenses and members of staff

According to the SALW Document, the **number of government officials** entitled to sign or otherwise authorize export documentation should be kept to a minimum consistent with the current practice of each participating State. To enhance common understanding of practices within the OSCE region participating States should provide information on the average number of staff engaged in export licensing procedures. Information on **the number of licenses** and /or information on total value of goods exported that year is also helpful in understanding state practice.

5.5 End-use, verification and re-transfer

One of the key standards in export control documentation, and in the OSCE Document, is that no export license can be issued without an authenticated **end-user certificate** (EUC) or some other official authorization issued by the receiving state, such as an International Import Certificate (IIC).

Participating States should provide information on what are the main principles determining when an end-user declaration is needed and when is it enough to resort to private declarations, are there circumstances in which an end-user document is not needed, and what is the reasoning behind the chosen state policy.

End use verification measures are essential to ensure that exports are carried out according to the export control rules. Under this section participating States are to provide information whether such a verification system is in place and what kind of procedures it includes.

For example: End use verification is required by law (name of the relevant national legislation). Verification is carried out as random inspections or when there is reason to suspect a violation of export control rules. Individual exports are verified on an ad hoc basis through diplomatic representation overseas.

5.6 Assistance

The Document states that participating States should consider assisting other participating States in the establishment of effective nationals mechanisms for controlling the export of small arms. Under

this section information could be provided on the state policy regarding assistance as well as on the kinds of projects currently undertaken.

For example: bilateral talks, training projects, awareness raising seminars, and co-operation between different foreign authorities such as customs officials, etc.

5.7 Law enforcement and penalties

Under this section reporting should include the relevant national legislation as well as a brief description of the penalties for illegal exports. It would also be useful to provide some information on the state practice.

For example: Procedures of the customs investigations in cases of export violation, the number of cases prosecuted and of what gravity have the export violations been.

6. Control over International Arms Brokering

According to the Document on small arms, the participating States identified the following measures as important in ensuring appropriate regulation of brokering activities at the national level:

a) Registration of brokers operating within their territory;
b) Licensing or authorization of brokering; or
c) Disclosure of import and export licences or authorizations, or accompanying documents, and of the names and locations of brokers involved in the transaction.

As described in the Document, "the regulation of international brokering activities is a critical element in a comprehensive approach to combating illicit trafficking in all its aspects". Therefore the following topics were created for the participating States to report on:

- Registration of international brokers working on State territory
- Registration of international brokers who are State nationals, wherever located
- Licences / authorisations for international brokering transactions (Revocable?)
- Reporting requirement for licensed international brokers?
- Exporter required to disclose brokers involved in transaction?
- Penalties for illegal international brokering activities?
- Number of revocations or disbarment of international brokers to date

6.1 Registration of international brokers working on State territory

Under this section information should be provided on the relevant national legislation or policy on registration of international brokers, also reporting on the absence of rules governing this particular topic is relevant. Detailed reporting on procedures would be very helpful since based on the submissions of the 2001 OSCE information exchange various States are in the process of developing national legislation regarding international brokering and would welcome experiences and examples from other participating States.

6.2 Registration of international brokers who are State nationals, wherever located

This topic relates to extra-territorial dimension of regulating international brokering. Reporting should include the relevant criteria used in determining when registration is necessary for State nationals regardless where they are located. Or in cases where State nationals working outside the territory have no legal restraints, it could be explained what are the requirements used when determining when a brokering activity is linked to the territory, i.e. at least one element of the brokering activity takes place on State territory.

6.3 Licenses / authorizations for international brokering transactions

Participating States were expected to report on the types of licensing / authorizing systems in place for international brokering. A brief description of the procedures is preferable. Possibilities for revoking a license and the reasoning should also be reported.

6.4 Reporting requirement for licensed international brokers?

This section regards information on state practice on requirements for international licensed brokers to report regularly to the relevant State organs.

For example: International brokers equipped with general licenses are to report regularly on their activities; or
International brokers are to obtain a license to act as a broker and then a specific license for each individual transaction where upon no additional reporting is required.

6.5 Exporter required to disclose brokers involved in transaction

Under this section participating States should provide information on any requirements for exporters to disclose information on the names and locations of brokers involved in the transaction.

6.6 Penalties for illegal international brokering activities and law enforcement

This section requires information on the penalties stipulated in national legislation for illegal international brokering activities, such could include fines, prison terms or a combination of both.

Law enforcement information gives a better understanding of State practice. Information under this section could include the following: number of revocations, disbarment of international brokers, number of criminal investigations and gravity of the offences.

7. Techniques and Procedures for Destruction

Information on national procedures for the control over manufacture broadly falls into seven categories (in no particular order):

- Techniques for destruction
- Details on record keeping and/or authority for destruction

- Seized or confiscated weapons
- Surplus weapons
- Small arms parts
- Public destruction practices and awareness campaigns
- Assistance to/from other states.

7.1 Techniques for Destruction

Reporting on techniques involves a discussion of the physical process or processes of rendering a weapon permanently inoperable. Such techniques may include smelting, pressing, cutting, shredding or other means of destruction. Particularly useful is the reporting of which weapons types are treated to each applicable technique and why. This information is valuable to other reporting States that may wish to further develop their methods. If States have experiences with destruction techniques that might increase operational safety, cost-effectiveness and reliability, this information would be welcome.

7.2 Details on record keeping and/or authority for destruction

Details on the chain of command for determining the necessity for destruction and conducting weapons destruction should be reported. Identifying the competent authorities increases transparency and allows States to compare practices. Record keeping at each stage of the process should be explained, including what information is recorded, by whom, and where that information is then stored. Helpful information would include how long these records are kept, whether the records are accessible to investigating authorities (domestic and/or foreign) and under what conditions.

7.3 Seized or confiscated weapons

Seized or confiscated weapons are specifically addressed in the OSCE Document on SALW and should be explicitly addressed in all reports. All countries should report on the matter because illicit weapons may potentially be found in any State, and each participating State is expected to have some policy for handling the likelihood. States without destruction capabilities may report on how they plan to address this matter, and those with destruction capabilities may report on the procedures for processing or disposing of such weapons.

7.4 Surplus Weapons

Statistical information on destroyed surplus weapons is one of the topics of the second Information Exchange (2002). However information on State policy regarding surplus weapons could be voluntarily provided in connection with the national report on the 2002 information exchange. It is particularly useful for States to report on the criteria used to determining whether material is surplus, and whether that material should be destroyed. If surplus material is not destroyed, and is sold, transferred or stored, this may be reported including the procedures for conducting these activities.

7.5 Public destruction and public awareness campaigns

Public destruction programmes or events, and public awareness campaigns about weapons destruction should be addressed separately, because awareness campaigns do not only need to address public destruction activities. Providing awareness about weapons seizures, confiscation, and State destruction activities are potentially valuable activities and are worthy of discussion. If public destruction campaigns are not conducted, States should explain whether this is the result of a policy or whether that bridge simply has not been crossed. If awareness campaigns are not conducted, States may consider reporting on whether they may be considered a useful tool in the future.

Finally, the reasoning behind not conducting such programmes is worthy of discussion so that ideas can be exchanged in the discussion over best practices. Ideas on whether present policies may be subject to change would also provide room for political discussion on the matter.

7.6 Assistance to / from other States

Under this section information could be provided on the state policy regarding assistance as well as on the kinds of projects currently undertaken. It may also be helpful to know what form of assistance is available for future considerations (e.g. technical assistance, financial support, national capacity building, etc.)